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Attorney for Defendant:  
PHILLIP LAURENCE COOPER

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	<b>Case No. CR 13-0706(A)-RGK</b>
Plaintiff,	)	
vs.	)	<b>MOTION FOR JUDGMENT OF</b>
	)	<b>ACQUITTAL; MEMORANDUM OF</b>
PHILLIP LAURENCE COOPER	)	<b>POINTS &amp; AUTHORITIES;</b>
Defendant.	)	<b>DECLARATION OF STANLEY I.</b>
	)	<b>GREENBERG; EXHIBITS</b>
	)	
	)	
	)	
	)	

Defendant Phillip Laurence Cooper moves this Court for a judgment of acquittal.

This motion is made pursuant to Rule 29, FRCrP, as well as the due process and fair trial provisions of the Fifth and Sixth Amendments. It is based upon this pleading and the

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1 documents attached, the files and records of the case, including the trial record, and such  
2 other matters as may be adduced at or before the hearing of this motion.

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4 Dated: May 14, 2014

Respectfully submitted,

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6 /s/

7 Stanley I. Greenberg  
8 Attorney for Defendant  
9 PHILLIP LAURENCE COOPER  
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**MOTION TO DISMISS**

Defendant Phillip Laurence Cooper moves this Honorable Court for a judgment of acquittal pursuant to Rule 29, FRCrP. Per direction of the Court, Rule 29 motions were deemed to have been made at the close of the government's case, the defense case, and at the completion of all evidence, without prejudice to the Defendant. Accordingly, this motion is made pursuant to all three subsections of Rule 29 (a) (b) and (c).

## **MEMORANDUM OF POINTS & AUTHORITIES**

### **I**

#### **Introduction**

The heart and central theory of the prosecution case was that Mr. Cooper and co-defendant Alguire conspired to steal a government vehicle and to have Mr. Cooper falsely impersonate a federal law enforcement officer. This was set forth in the Count One conspiracy charge. Count Two charged Mr. Alguire with theft of the vehicle. Count Three charged Mr. Cooper with false impersonation, and Mr. Alguire with aiding and abetting him. Count Four charged Mr. Cooper alone with 3 separate false statements to a government agent, all during his interview of September 27, 2011.

The jury acquitted both defendants of the conspiracy count. Mr. Alguire was acquitted of the charges that he stole the vehicle (Count 2) and that he aided and abetted Mr. Cooper in falsely impersonating a federal law enforcement officer (Count 3). Mr. Cooper was convicted of Count 3 (false impersonation of federal officer) and Count 4 (false statement to a government agent). For the reasons set forth below, both convictions should be vacated and judgments of acquittal should be entered.

### **II**

#### **Standard of Review**

The standard by which the judge is to be guided in passing on a motion for judgment of acquittal is the same regardless of whether the motion is at the close of the government's case, at the close of all the evidence, or after discharge of the jury. The

1 Court is to direct acquittal “if the evidence is insufficient to sustain a conviction.” Rule  
2 29, FRCrP.

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4 **III**

5 **Count Four—False Statements**

6 We begin this discussion with Count 4 because it also impacts the discussion of  
7  
8 Count 3. Count 4 charges Mr. Cooper with making 3 false statements to a government  
9 agent in violation of 18 U.S.C. § 1001. This charge arises from Mr. Cooper’s interview  
10 with U.S. Forest Service Special Agents Lomvardias and Ealy on September 27, 2011.  
11 To be crystal clear, the government has failed to prove beyond a reasonable doubt that  
12 Mr. Cooper made the allegedly false statements; and therefore has also failed to prove  
13 beyond a reasonable doubt any false statements by Mr. Cooper.  
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16 The false statements alleged are these:  
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- 18 1. Mr. Cooper remained in the vehicle at all times when coming into contact with  
19 others when, in fact, he got out of the vehicle at times when coming into contact  
20 with others;  
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- 22 2. He did not say to anyone that he was a law enforcement officer when, in fact,  
23 he identified himself as a member of law enforcement to others; and  
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- 25 3. He never requested identifying information from anyone when, in fact, he asked  
26 visitors to the national forest for identifying information. First Superseding  
27 Indictment (“FSI”), Count 4.  
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1 The most significant event of the trial bearing on this motion, we submit, was  
2 during the prosecutor's closing argument. He conceded to the jury there was a "failure  
3 of proof" with regard to the second false statement allegation. The prosecution  
4 presented no evidence that Mr. Cooper ever identified himself as a "law enforcement"  
5 officer, as alleged. The prosecutor asked the jury to disregard that allegation due to this  
6 failure of proof. This is important not only to the Count 4 false statement charge. It is  
7 also critical to the Count 3 false impersonation charge as well. The reason is the claim  
8 that Mr. Cooper verbally identified himself as a law enforcement officer was the  
9 underlying basis for the charge that Mr. Cooper falsely impersonated a federal law  
10 enforcement officer in Count 3. (See discussion regarding Count 3 below).

11 This Government concession of lack of proof left but 2 claims of false statements  
12 in Count 4 for the jury to consider:

13  
14 **A. Mr. Cooper remained in the vehicle at all times when coming into contact**  
15 **with others; when, in fact, he did get out of the vehicle at times when**  
16 **coming into contact with others.**

17  
18 The evidence was overwhelmingly clear that Mr. Cooper spent time both in  
19 and out of the Forest Service vehicle, openly and notoriously. It was hardly a  
20 secret, and he had no reason or purpose to lie about that.

21  
22 Aside from the silly and improbable claim that Mr. Cooper "remained in the  
23 vehicle at all times," or that he false claimed that to be true, this was  
24 convincingly shown at trial to be a false charge by the government. SA Ealy's  
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1 contemporaneous notes of that interview were received by the jury and showed  
2 without doubt he had attributed to Mr. Cooper the following statements:

3 “exited vehicle to make contact  
4

5 Eddy stayed in car.” (Defendant’s Exhibit B).  
6

7 Thus, the interviewing agent’s very own notes prove just the opposite of  
8 what the government alleges to be a false statement. These notes prove Mr.  
9 Cooper stated that he did exit the vehicle when making contact.  
10

11 The jury recognized this failure of proof when they disregarded this  
12 allegation as being unproven. Instead, they based the conviction on the third  
13 false statement allegation. (See attached Declaration of Stanley Greenberg  
14 regarding statements of the jury foreman). We do not base this argument on the  
15 statements of the jury foreman, but on the failure of proof itself. The jury  
16 foreman’s statements simply confirm what is plain and obvious.  
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19 **B. Mr. Cooper never requested or demanded information from anyone when,**  
20 **in fact, he asked some visitors to the national forest for identifying**  
21 **information.**  
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24 This, too, is a completely unproven charge. It is unproven because it is  
25 untrue. SA Lomvardias conceded in his trial testimony that, when Cooper was  
26 questioned if he had asked any visitors for their identifying information, Mr.  
27 Cooper told him that he took ID’s of Rudy Molina and two others that were  
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1 with Molina on September 25, 2011.<sup>1</sup> This directly contradicts the false claim  
2 that Mr. Cooper said he “never” requested any visitor’s I.D. Moreover, the  
3 Government has always known this allegation to be untrue. The investigative  
4 report prepared by SA Lomvardias, and signed by both he and SA Ealy reads as  
5 follows:  
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7  
8 “SA Ealy asked Cooper how many identification  
9 cards he took. Cooper advised that he took a total  
10 of three identification cards from Rudy Molina on  
11 the evening of September 25.” (See marked portion  
12 of Exhibit A, attached).  
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15 Additionally, in a supplemental incident report prepared and signed by SA Ealy  
16 alone, he wrote the following:  
17

18 “When asked if he [Cooper] had taken any ones  
19 [sic] ID he stated that he took Rudy MOLINA’s ID  
20 (reporting party) and two others on September 25.”  
21  
22 (See marked portion of Exhibit B, attached).  
23

24 Thus, the record is crystal clear that this is not only a false allegation by the  
25 government, but it also suffers from a failure of proof at trial. Both agents reported,  
26 together and independently, that Mr. Cooper told them about taking the ID’s of the  
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30 <sup>1</sup> References to trial testimony are from memory and notes.



1 reporting person, Molina, and two of his friends on September 25, 2011. SA Lomvardias  
2 conceded this point in his testimony. It is thus not possible that Mr. Cooper could be  
3 convicted of falsely claiming he never requested the ID's of visitors to the national forest  
4 when the evidence so obviously and definitively contradicts that claim. Clearly the  
5 evidence of this charge is insufficient to support a verdict.  
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#### 8 IV

#### 9 COUNT THREE—FALSE PERSONATION OF A FEDERAL OFFICER

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11 The jury convicted Mr. Cooper of Count 3. This charges him with falsely  
12 assuming and pretending to be an officer and employee of the U.S. Forest Service, and  
13 acting as such. This requires proof beyond a reasonable doubt of two elements: (1)  
14 pretending to be an officer or employee of the U.S. Forest Service; and (2) acting as such  
15 (See Government's Jury Instruction 21). The statute requires two separate acts. It is not  
16 sufficient for the same act to satisfy both the "impersonation" requirement and the  
17 "acting as such" requirement. *U.S. v. Rosser*, 528 F. 2d 652 (D.C. Cir. 1976). Conviction  
18 requires some conduct above and beyond what the government claims is the  
19 impersonation element of the crime. 18 U.S.C. § 912; *Rosser, supra*.  
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24 The government obviously believed it had evidence that Mr. Cooper falsely and  
25 verbally identified himself as a law enforcement officer. This is plain from the FSI. One  
26 of the false statements alleged in Count 4 is that Mr. Cooper "did not say to anyone that  
27 he was a law enforcement officer." The Government contended this was a false  
28 statement. The Court will likely recall that no witness testified to that fact; and the  
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1 government conceded in its closing argument it had failed to prove this false statement  
2 allegation. Thus, the charge that Mr. Cooper said he had not stated to anyone that he was  
3 a law enforcement officer is correct, rather than false. He did not say that.  
4

5 This is of critical importance. The claim that Mr. Cooper falsely represented  
6 himself as a law enforcement officer is the *sine qua non* of the false impersonation  
7 charge. Indeed, there has never been a conviction for this charge without such a false  
8 representation.  
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11 Of the many cases of convictions for this statute, we can find none—not one—in  
12 which the defendant did not verbally identify himself as a law enforcement officer, in  
13 addition to some other conduct that meets the “acting as such” requirement. See, for  
14 example, *U.S. v. Bryant*, 117 F.3d 1464 (D.C. Cir. 1997) (defendant verbally claimed to  
15 be with the U.S. Marshal’s office); *U.S. v. Gilbert*, 143 F.3d 397 (8<sup>th</sup> Cir. 1998)  
16 (defendant verbally claimed he was an officer with the U.S. Custom Service); *U.S. v.*  
17 *Bakhtiari*, 913 F.2d 1053 (2<sup>nd</sup> Cir. 1990) (defendant verbally claimed to be an employee  
18 of the U.S. State Department); *U.S. v. Martindale*, 790 F.2d 1129 (4<sup>th</sup> Cir. 1986)  
19 (defendant claimed he was employed by the U.S. State Department and displayed a false  
20 diplomatic passport); *U.S. v. Wells*, 893 F.2d 535 (2<sup>nd</sup> Cir. 1990) (defendant verbally  
21 claimed to be a federal officer); *Pierce v. U.S.*, 868 F.2d 949 (6<sup>th</sup> Cir. 1936) (defendant  
22 verbally claimed he was an officer with the Tennessee Valley Authority); *Russell v. U.S.*,  
23 271 F. 686 (9<sup>th</sup> Cir. 1921) (defendant displayed a badge and said he was “from the  
24 federal government”); *U.S. v. Larson*, 125 F. Supp. 360 (D. AK 1954)(defendant stated  
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1 he was a member of the FBI engaged in an investigation of a criminal violation);  
2 *Dickson v. U.S.*, 182 F.2d 131(10<sup>th</sup> Cir. 1950) (defendant displayed a badge and said, “I  
3 am a federal officer.”); *U.S. v. Rosser*, 528 F.2d 652 (D.C. Cir. 1976) (defendant verbally  
4 claimed to be an employee of the Internal Revenue Service); *U.S. v. Hessbrook*, 504 F.2d  
5 1375 (5<sup>th</sup> Cir. 1974) (defendant claimed to be with the FBI); *Whaley v. U.S.*, 324 F.2d 356  
6 (9<sup>th</sup> Cir. 1963) (defendant claimed to be with the FBI, and displayed a badge and leather  
7 folder); *Heskett v. U.S.*, 558 F.2d 897 (9<sup>th</sup> Cir. 1932) (defendant claimed to be with the  
8 immigration office and displayed a badge); *U.S. v. Romero*, 293 F.3d 1120 (9<sup>th</sup> Cir.  
9 2012)(defendant misrepresented himself as an immigration agent and promised to  
10 expedite the victim’s application in exchange for money).  
11

12 In addition, in each and every case, the falsely impersonating defendant sought  
13 some personal benefit and/or exploitation of the person(s) deceived. This is the “acting  
14 as such” requirement of the crime and represents the essence of the “acting as such”  
15 requirement. Mr. Cooper sought no benefit and exploited no one. We can find no case in  
16 which the defendant did not seek to exploit someone and/or obtain some personal benefit.  
17 This case stands alone. Should this conviction stand, this will be the first and only case in  
18 which the defendant both made no false claim of authority, and sought no benefit and/or  
19 exploitation of another.  
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21 Given the absence of evidence of false impersonation, we turn to other potential  
22 evidence the government might conceivably claim that satisfies the 2 required elements  
23 of § 912; that is, (a) conduct that amounts to false impersonation; and (b) acting as such.  
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1           **1. Use of the Forest Service vehicle as false impersonation**

2           In this trial, the prosecution's emphasis was on the use of the vehicle. But we know  
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4 from the trial testimony that this vehicle was not sought by Mr. Cooper. Rather, it was  
5 Mr. Alguire's idea. He solicited Mr. Cooper. The vehicle was selected by Fleet Manager  
6 Alguire, and given to Mr. Cooper in his capacity as a Forest Service volunteer. Mr.  
7 Cooper did not steal, purloin or embezzle it. Rather, it was given to him, as a volunteer,  
8 by Alguire for the express purpose of driving it, moving it around and sitting in it. (In  
9 Alguire's words, "to establish a presence.") In his capacity as a Forest Service volunteer  
10 Mr. Cooper was therefore authorized to operate the vehicle, and he did so with the  
11 express authorization of the Forest Service Fleet Manager.  
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15           Moreover, we submit the mere act of operating and/or sitting in the vehicle cannot  
16 satisfy the requirement that Mr. Cooper falsely impersonated a law enforcement officer.  
17 If he wore a uniform then perhaps the government might have some plausible argument.  
18 But Mr. Cooper was dressed in civilian clothes, obvious to everyone. The plain language  
19 of the statute requires some positive, affirmative conduct beyond merely sitting in a  
20 vehicle or driving it. Some affirmative conduct is required to establish "false  
21 impersonation."  
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25           The record is void of anything that would support the claim of false impersonation.  
26 Mr. Cooper made no verbal claim of being a law enforcement officer. He neither wore  
27 nor displayed any badge. He wore no other indicia to indicate he was a law enforcement  
28 officer. He wore no uniform. He wore no gun belt with holster and paraphernalia often  
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1 associated with police. He never used the siren. He never activated the police lights on  
2 the light bar of the roof of the vehicle. To the contrary, he went out of his way to assure  
3 he would not be taken for a law enforcement officer. The witnesses testified he wore  
4 casual clothes, khaki's and a collared shirt hanging out; blue jeans with a T-shirt that said  
5 "M and M's." One witness said he was dressed "sloppishly." This belies any conduct or  
6 intent to falsely impersonate a law enforcement officer. Therefore, sufficient evidence of  
7 affirmative false impersonation is plainly lacking.  
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## 10 **2. The "Acting as Such" Requirement**

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12 Given the failure of proof that Mr. Cooper satisfied the impersonation element, we  
13 turn to the requirement of "acting as such." Arguably, asking people for their identifying  
14 information might satisfy that element. However, it cannot satisfy both requirements of  
15 the statute. And the "acting as such" element must be separate and distinct from the false  
16 impersonation element. *Rosser, supra; Larson, supra.*  
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19 There is yet another, stronger, reason why the act of requesting identifying  
20 information cannot satisfy the "acting as such" requirement of the statute. § 912 has not  
21 one but two specific prohibitions. It prohibits impersonating a federal officer, AND,  
22 either:  
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25 (A) "Acting as such";

26 (B) "... or in such pretended character demands or obtains any money,  
27 **paper, document** or thing of value, . ." (Emphasis added).  
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1 Thus the statute has a specific prohibition against demanding things such as  
2 personal identifying information. It is described in the statute as “any . . . paper,  
3 document or thing of value.” But this is not the provision that Mr. Cooper is charged  
4 with violating. Had he been so charged, we would concede that he did, indeed, obtain  
5 “papers” and “documents.” But he was not so charged with obtaining papers or  
6 documents. Moreover, we would still not concede a violation of § 912 because of the  
7 failure of proof of the false impersonation requirement of the statute.  
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11 There is yet another reason why asking for identification cannot satisfy the  
12 requirement of “acting as such.” To do so would violate a basic, fundamental rule of  
13 statutory construction. Courts should not construe a statute to make parts of it “mere  
14 surplusage.” If asking for ID papers constitutes “acting as such,” that would make the  
15 second part of the statute (which specifically prohibits asking for ‘paper’) “mere  
16 surplusage.”  
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19 “It is a well-established principle of statutory  
20 construction that ‘legislative enactments should  
21 not be construed to render their provisions  
22 ‘mere surplusage.’” *Am. Vantage Cos., Inc*  
23 *v. Table Mountain Rancheria*, 292 F.3d 1091,  
24 1098 (9<sup>th</sup> Cir. 2002). *U.S. v. Bendtzen*, 542  
25 F.3d 722, 727 (9<sup>th</sup> Cir. 2008).  
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1 The point is that the “acting as such” provision cannot possibly apply to requesting  
2 visitors’ identifying information, since Congress has included a specific provision for  
3 doing such. Mr. Cooper is not charged with that violation. Therefore, “acting as such”  
4 must mean something more and different than simply obtaining “paper, documents, or  
5 things of value.” And the government has failed to prove any such conduct that might  
6 arguably satisfy the “acting as such” requirement of § 912.  
7

## 8 V

### 9 Public Authority and Good Faith

10 Finally, we submit that Mr. Cooper acted upon public authority and in good faith  
11 with respect to Count 3. We believe the evidence supported both; and that he was  
12 entitled to have his “theory of defense” explained in the jury instructions. *U.S. v. Baer*,  
13 439 F.3d 565, 568 (9<sup>th</sup> Cir. 2006). We did request jury instructions as to both, which the  
14 Court declined to give. The anticipated motion for new trial is the more appropriate place  
15 to argue this point. We mention it here, although the instructions were not given, so the  
16 court can take such defense evidence into account in ruling on this motion.  
17

## 18 VI

### 19 CONCLUSION

20 The lynchpin of the prosecution’s case has failed. There is no evidence that Mr.  
21 Cooper ever falsely identified himself to anyone as a law enforcement officer. Indeed,  
22

1 the evidence proves exactly the opposite. Without that evidence the remainder of the  
2 prosecution's case is insufficient to prove the charges or support the convictions.

3  
4 The false statement charges are directly contradicted by the evidence,  
5 demonstrating the government's charge of false statements is itself falsely made.

6 Similarly, with no evidence that Mr. Cooper falsely identified himself as a law  
7 enforcement officer, the false impersonation charge falls as well. There is no legally  
8 recognizable conduct to prove beyond a reasonable doubt that Mr. Cooper falsely  
9 impersonated a federal law enforcement officer. Further, there is no legally recognized  
10 evidence that Mr. Cooper "acted as such." Finally, if the Government's theory is that Mr.  
11 Cooper "acted as such" by obtaining the identification cards of forest service visitors,  
12 they should have charged Mr. Cooper under that portion of the statute. Having failed to  
13 do that, this charge, too is not supported by proof beyond a reasonable doubt.  
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18 WHEREFORE, for the foregoing reasons, this Court should grant the motion for  
19 judgment of acquittal as to Counts 3 and 4.  
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21 Dated: May 14, 2014

Respectfully submitted,

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24 /s/

25 Stanley I. Greenberg, Esq.  
26 Lawyer for Phillip Laurence Cooper  
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**DECLARATION OF STANLEY I. GREENBERG, ESQ**

I hereby declare, under penalty of perjury, the following:

1. I am a lawyer licensed to practice before this court and I represent defendant Phillip Laurence Cooper.
2. Shortly after the jury returned its verdict I had a conversation in the rear of the courtroom with the jury foreperson. Also present was my associate, Evan Charles Greenberg.
3. The foreperson advised as follows with respect to Count 4. The jury concluded that the proof was insufficient with respect to the claim that Mr. Cooper was alleged to have told Lomvardias and Ealy that he remained in the vehicle at all times when contacting forest service visitors. They convicted on the allegation that Mr. Cooper said he never requested identifying information from anyone.

Date: May 14, 2014

/s/

Stanley I. Greenberg, Esq.  
Lawyer for Philip Laurence Cooper